IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 232 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

COMMISSIONER OF INCOME TAX

Versus

DHIJEN DARSHI FAMILY TRUST

Appearance:
MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 16/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of Revenue, the Income Tax Appellate Tribunal has referred following question of law for opinion of this Court in respect of Assessment Year 1981-82 :

"Whether, the Tribunal was right in law and on facts in directing the I.T.O. to treat the assessee as a specific trust ?"

2. Though served, no one appears on behalf of the respondent.

3. The assessee in the course of assessment proceedings claimed that it be assessed in the status of a specific trust. This was rejected by the I.T.O., who accorded the status of a discretionary trust. The A.A.C., however, accepted the case of the assessee and treated the assessee as a specific trust. The Tribunal has confirmed the order of the A.A.C. relying on its own decision in the assessee's case for Assessment Year 1980-81 in I.T.A. No. 2310/Ahd/83.

4. We have heard the learned counsel for the Revenue. The learned counsel states that the controversy raised in the present Reference is concluded by the judgment of Division Bench of this Court comprising Hon'ble the Chief Justice and Mr.Justice A.R.Dave rendered in the case of Commissioner of Income Tax v. Dhijen Dharshi Family Trust (this very assessee), in I.T.R.No.179 of 1985, on September 21, 2000. In view the decision of the High Court, we are of the opinion that the Tribunal was right in law in directing the I.T.O. to treat the assessee as a specific trust. The Reference is, therefore, answered in favour of the assessee and against the Revenue.

The Reference accordingly stands disposed of, with no order as to costs.

(patel) (J.M.Panchal,J.) (M.S.Shah, J.)